

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANDERSON,

Plaintiff,
v.

KEVIN ALLEN JUTZY, M.D., RAUL
TUMNADA, P.A., and BADAWI
ABELLATIF, M.D.,

Case Number 15-11727
Honorable David M. Lawson
Magistrate Judge R. Steven Whalen

Defendants.

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ORDER ADOPTING REPORT AND RECOMMENDATION, AND
GRANTING MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS BADAWI ABELLATIF AND RAUL TUMADA

Presently before the Court is the report issued on February 2, 2017 by Magistrate Judge R. Steven Whalen pursuant to 28 U.S.C. § 636(b), recommending that the Court construe the motion to dismiss by defendants Badawi Abellatif and Raul Tumada as one for summary judgment, that the Court should grant it, and that Abellatif and Tumada be dismissed without prejudice. Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed thus far. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt. #50] is **ADOPTED**.

It is further **ORDERED** that the motion to dismiss by defendants Badawi Abellatif and Raul Tumada [dkt. #34] is construed as one for summary judgment and is **GRANTED**. The claims against defendants Badawi Abellatif and Raul Tumada are **DISMISSED WITHOUT PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: February 22, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 22, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI